

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)
(THROUGH VIDEO CONFERENCING)**

**BEFORE SH. KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 4396/Del/2018
(Assessment Year: 2012-13)**

M/s. CEC-SOMA JV, B4/45, Safdarjung Enclave, New Delhi-110029	Vs.	ACIT, Circle 62(1), New Delhi
APPELLANT		RESPONDENT
PAN No: AAAAC4669E		

Revenue By : Sh. Sagar Malhotra, CA
Assessee By : Ms. Nidhi Srivastava, CIT-DR

PER ANADEE NATH MISSHRA, A.M.:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-20, New Delhi, ["Ld. CIT(A)", for short], dated 28.03.2018 for Assessment Year 2012-13. Grounds taken in this appeal of Assessee are as under:

"1. That the Ld. AO has erred both in law and on facts in determining the assessed loss amounting to INR 73,553,150/- as against the returned loss of INR 91,182,520/-. The Ld. CIT(A) has further erred in conforming the additions/disallowances made by the Ld. AO.

2. (a) That the Ld. CIT(A) has erred both on facts and in law in confirming the disallowance made by Ld. AO amounting to INR 16,049,707/-, being the salary of project leader (deputed by CEC for the

work of the appellant) reimbursed by the appellant to CEC, on the alleged contention that the act of deputation of project leader by CEC for the work of appellant was not authorized by the joint venture agreement.

(b) That the Ld. CIT(A) failed to appreciate the explanation of the appellant that there was in understanding between the appellant and CEC to reimburse the salary expense of the project leader on account of deputation of project leader by CEC for the work of the appellant.

(b) That the Ld. CIT(A) failed to understand that agreement can be oral or in writing. The Ld. CIT(A) erred in understanding the concept of "substance over form" wherein actual conduct is given more importance than what has been written in the agreement.

3. That the Ld. CIT(A)/ AO has erred both on facts and in law in ignoring the current year's loss amounting to INR 91,182,520/- while computing the assessed income of the appellant.

4. The Ld. CIT(A) grossly erred in passing order without following the principle of natural justice. The assessee has not been given any opportunity to produce documents in relation to the appeal filed before the Ld. CIT(A). The Ld. CIT(A) has erred in passing order in haste.

5. That the Ld. CIT(A)/AO failed to give the credit of TDS amounting to INR 94,234 as deducted by DMRCL and the same was also claimed by the appellant in its return of income."

(B) At the time of hearing, at the outset, the learned Counsel for the Assessee informed us that the assessee has opted to settle the appeal under Vivad Se Vishwas Scheme, 2020 ("VSVS", for short) and that the assessee has already filed the relevant forms. The Ld. Counsel for assessee also drew our attention to letter dated 17th February, 2021 filed in Income Tax Appellate Tribunal ("ITAT", for short) giving intimation for the same, and requesting to withdraw the appeal.

(B.1) At the time of hearing before us, the Ld. Counsel for assessee submitted before us that this appeal may be treated as withdrawn and may be dismissed on

account of the aforesaid VSVS. After due consideration, and in view of the foregoing; we are of the view that this appeal has become infructuous, and we treat this appeal as withdrawn on account of the aforesaid VSVS. Accordingly, this appeal having become infructuous, are hereby dismissed as withdrawn, subject to settlement of the disputes in the appeal under the aforesaid VSVS.

(C) **Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under this appeal before us are not settled under the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of this appeal, in accordance with law.**

(D) In the result, this appeal is dismissed.

Order pronounced in open court on 02/03/2021

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 02/03/2021

Vinita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI